

83-94-I

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July 26, 1983

Mr. Delbert Downing
Chairman
New Hampshire Water Resources Board
37 Pleasant Street
Concord, New Hampshire 03301

RE: CHAPTER 92, LAWS OF 1983, FORMERLY HOUSE BILL 427-FN
ESTABLISHING CIVIL PENALTIES

Dear Mr. Downing:

By memorandum dated July 11, 1983 and as clarified by a telephone conversation with your staff on July 19, 1983, you have asked our opinion as to the date on which a violation occurs for the purpose of establishing a fine against a party who fails to comply with an order to repair a dam issued by the Water Resources Board (hereinafter "the Board") under RSA 482:9. The answer to your question is that if a Board order directs a dam owner to make certain repairs to his dam by a certain date and the owner does not make the subject repairs by that date, the violation of RSA ch. 482 occurs on the date that the dam was to have been repaired. It does not occur on the date that the Board notifies the owner of his non-compliance with the Board order.

The question that you asked assumed that the Board issued an order to the owner of a dam directing him to make certain repairs to the dam by a specific date. You further assumed that the owner did not timely make these repairs and that subsequent to the date in question, the Board notified the dam owner that it had found him to be in non-compliance with its order.



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Our conclusion that the violation of RSA ch. 482 runs from the date set for the ordered repairs is based on the language of the order in question. The order directs the dam owner to make the ordered repairs by a given date. Common sense dictates that if the repairs are not made by this date, the owner is as of that date in violation of the order and hence of RSA ch. 482. The Board's notification simply references an existing fact, which fact is the fact of non-compliance. Note is made in this regard that RSA 482:11 as amended provides for a penalty of "not more than \$100 per day ..." with respect to any person who violates any provision of RSA ch. 482. The statute further provides that "each day of non-compliance shall constitute a separate offense." Again, and to summarize, the date of non-compliance is the date by which the Board ordered the subject dam to be repaired but which, under an assumed set of facts, it was not.

Very truly yours,

Edward L. Cross, Jr.

Edward L. Cross, Jr.
Assistant Attorney General
Environmental Protection Division

ELC, JR./tlr

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